IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1187 OF 2004

Pankaj Patil ... Petitioner
versus
Smt.Lila Muralidhar Chaudhari
and another ... Respondents

Ms.Pritam Tendulkar i/by M.S.Karnik for petitioner.

Mr.S.S.Pednekar, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 11th October 2006

PC :

1. The petitioner has invoked this Court's inherent jurisdiction to quash and set aside the criminal proceedings as also Criminal Case No.490/S/2003 pending in the Court of learned Metropolitan Magistrate, 22nd Court, at Andheri.

2. The first respondent is the original complainant. The first respondent is the mother in law of the petitioner's sister. The marriage between the sister of petitioner and son of respondent no.1 was solemnized on 5th May 1999 at

Mumbai. There was illtreatment to the petitioner's sister after she was taken to the matrimonial home and in such circumstances she returned to her parents. On the basis of the mental and physical cruelty and illtreatment meted out, a complaint was lodged invoking the jurisdiction of the Chief Judicial Magistrate, Jalgaon under sections 498A, 323, 506, 506(Part II) r/w 34 of IPC.. That complaint came to be registered as Criminal Case No.590 of 1999.

3. The petitioner states that agitated by the fact of the complaint being filed by the petitioner's sister, the first respondent and the others from the family decided to teach the petitioner and other family members a lesson and in such circumstances a false complaint has been filed being Criminal Case No.490/S/2003. It is alleged that when the petitioner went to serve the proceedings in the Jalgaon complaint, the first respondent was slapped and abused in filthy language. The incident is alleged to have taken place some time on 6th May 2003 but the verification of the complaint is dated 29th July 2003. This is nothing but a false case and a counter blast to the proceedings of the petitioner's sister.

4. It is in such circumstances that the learned counsel appearing for the petitioner submits that the learned Metropolitan Magistrate should not have issued process. The ingredients of the offences alleged against the petitioner namely Sections 506, 323 and 352 of IPC are not made out. The complaint is wholly belated and malafide.

5. In my view, upon a perusal of the complaint copy of which is placed on record and the details of the incident narrated, it cannot be said that the learned Magistrate was in error in issuing process against the petitioners. It is not possible to take note of the submissions that this entire application is an after thought and malafide because that would necessitate going into rival pleas on merits. At this stage it is not permissible to undertake such an inquiry. All that the learned Magistrate has done is issued process against petitioner. That by itself does not mean that the petitioner is prevented from raising appropriate pleas and substantiating them by placing such materials as are permissible in law. Needless to state that this Court’s reluctance to interfere at this

stage, should not be construed as an expression on the merits of the controversy. All contentions including those on the malafides of the complainant, are kept open for being urged at an appropriate stage. Petition dismissed.

(S.C.DHARMADHIKARI, J.)